

**DATE:** April 28, 2011

**TO:** CVRC Board of Directors

**VIA:** Gary Halbert, Chief Executive Officer (EC) for G.H.

**FROM:** Eric Crockett, Redevelopment Manager; CVRC Secretary

**SUBJECT:** Exclusive Negotiating Agreement with R.D. Olson Development for 5.98 acres located at the Northwest Corner of F Street & Woodlawn Avenue (707 F Street-former City Corporation Yard)

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#### **EXECUTIVE SUMMARY**

Staff is requesting CVRC recommendation for approval by the City Council of an Exclusive Negotiating Agreement (ENA) with R.D. Olson Development to negotiate the purchase/sale and development of the City's former corporation yard ("Corp Yard") located on 5.98 acres at the northwest corner of Woodlawn Avenue and F Street. The initial negotiating period under the proposed ENA is 90 days. R.D. Olson Development is proposing to purchase the site at fair market appraised value and construct two limited service Marriott hotels consisting of a Courtyard and Residence Inn. The following report provides background discussion of the proposed project, the developer's qualifications, and the structure of the ENA, including the reasons why the City is the proposed party to the ENA.

#### **RECOMMENDATION**

Recommend that the City Council approve a 90-day ENA with R.D. Olson Development for the Corp Yard.

## DISCUSSION

### Background

Staff has been engaged in active discussions with R.D. Olson Development ("R.D. Olson") since January 2011 about the potential development of the City's 5.98-acre former Corp Yard with two limited service Marriott hotels – a Courtyard and Residence Inn. On February 11, 2011, staff met with representatives from both R.D. Olson and Marriott International, including Marriott's Senior Vice President for Lodging Development, to outline an ENA process and schedule for negotiation of a purchase and sale agreement between the City and R.D. Olson for the Corp Yard. R.D. Olson is seeking to purchase the property at fair market appraised value and develop the property without any financial assistance from either the City or Redevelopment Agency. Consistent with the Redevelopment Agency's process for the qualification and selection of developers for ENAs, R.D. Olson submitted a statement of qualifications (SOQ attached) and, based on staff's review of the developer's experience, references, and financial capabilities, staff has determined that R.D. Olson is qualified to purchase and develop the property with the proposed hotel uses. The proposed project is anticipated to generate significant transient occupancy tax ("TOT") revenues for the City and serve as a catalyst for continued transit-oriented development in this key location of the City's Urban Core and I-5 gateway area.

### ENA Structure and Purpose

Traditionally, either the Redevelopment Agency or CVRC, on behalf of the Redevelopment Agency, has entered into ENAs with private or nonprofit development entities seeking to purchase City- or Agency-owned land and/or some form of financial assistance for real estate development purposes. R.D. Olson is seeking to purchase the Corp Yard at fair market appraised value and is not requesting any form of financial assistance from either the City or Redevelopment Agency. The City has the authority to enter into ENAs, similar to memorandums of understanding/agreement and affordable housing agreements. By establishing the City as a party to the ENA, the proposed ENA structure seeks to address potential complications that could be created if Governor Jerry Brown's proposal to eliminate redevelopment agencies (currently in the form of budget trailer bills SB 77 and AB 101) is approved by the Legislature during the ENA negotiation period.

The purpose of the ENA (see Attachment 2) is to establish a legal and process framework for the City and R.D. Olson to conduct due diligence activities and negotiations for purchase/sale and related development agreements for the Corp Yard, including:

- Independent property appraisals and agreement on fair market value
- Site planning and preliminary review for conformance with the General Plan and Urban Core Specific Plan (UCSP)
- Review of development programming and market/financial feasibility
- Fiscal impact analysis for the City's General Fund, including projected transient occupancy tax revenues
- Deal points for purchase/sale and development agreements

A schedule of milestones for the above activities is contained in the ENA as Exhibit "B."

The initial term of the ENA is 90 days and can be extended, if certain criteria are met, for an additional 60 days at the discretion of the City Manager. Negotiations for the purchase/sale and development of the Corp Yard will include a portion or all of the 5.98-acre site, based upon site planning and consistency with the UCSP.

#### E Street Transit-Oriented Development Program ( "E Street TOD") and Proposed Project

##### *E Street TOD*

The Corp Yard is situated in a strategic transit location adjacent to the E Street Trolley Station at a key entryway into the City's Urban Core from the I-5 Freeway (see Attachment 3). The UC-15 Subdistrict of the UCSP is located in the E Street Visitor Transit Focus Area (TFA) of the General Plan. This particular TFA is one of three TFAs in the City designated by the 2005 General Plan Update and 2007 UCSP to allow the greatest densities and heights in the City. The Redevelopment Agency and CVRC previously entered into ENAs with other developers for the Corp Yard, including downtown San Diego-based Intergulf Development and Los Angeles-based Galaxy Development, for high-density mixed-use residential projects that contemplated high-rise development. Both development proposals fell victim to the economic recession and implosion of the real estate market.

Due to the importance of transit-oriented development at and around the E Street Trolley Station, the Redevelopment Agency in the fall of 2009 commissioned an Urban Land Institute Technical Assistance Panel ("ULI TAP") to study and make recommendations for the implementation of an E Street Transit-Oriented Development ("E Street TOD") program for 20 acres of the UC-15 Subdistrict. The ULI TAP was made up of planning professionals, architects/urban planners, real estate developers, and transportation planners from ULI's San Diego/Tijuana District Council. In addition to making recommendations about broader infrastructure and circulation improvements needed to facilitate redevelopment of the E Street TOD, the ULI TAP developed site planning recommendations, including a concept that proposed to retain at least 162 hotel rooms west of Woodlawn Avenue. R.D. Olson's proposed project would include approximately 270 upper-end hotel rooms located in two separate but interconnected limited service Marriott hotels. The project would create an important catalyst for timely implementation of the E Street TOD program for the UC-15 Subdistrict, including the 10+ acres west of Woodlawn Avenue and the overall 20+ acres of the TOD program area. As the economy and real estate market show signs of a slow and protracted recovery, it will be critical for the City to position itself and the E Street TOD properties for redevelopment during the initial upward rebound of the market.

#### *Proposed Project*

R.D. Olson and Marriott International are proposing to develop both a Marriott Courtyard and Marriott Residence Inn on the Corp Yard. Both products are heavily marketed to business travelers and extended-stay guests. With existing full-service Marriott hotels in Downtown San Diego, Marriott is seeking to expand its offerings to I-5 and bi-national business travelers through products that offer comfortable extended-stay accommodations. While the two product types are similar in services and amenities, their market orientation toward shorter- and longer-stay guests make them complementary to one another, even at back-to-back or adjacent locations.

The two hotel buildings are both envisioned to be four-story buildings with surface parking. Upon execution of the ENA, R.D. Olson will submit preliminary site plans and design renderings. Given the UCSP's high-density, high-rise vision for the UC-15 Subdistrict, staff anticipates that development exceptions will need to be considered to facilitate lower densities and heights as proposed by R.D. Olson. This is consistent with the ULI TAP's March 2010 report to the City which specifically provided that: "In order to catalyze development now, we recommend an FAR of 0.75 to 1.25 in the early phase or phases. Later phases

should be considered for development not to exceed the 4.0 FAR as identified in the UCSP."

If negotiations under the ENA are successful, purchase/sale and related development agreements will be prepared for consideration by the City Council. The agreements may affect either a portion or all of the Corp Yard, based on site planning and negotiations. R.D. Olson will concurrently file a formal application for a Design Review Permit under the UCSP.

#### Developer Qualifications

R.D. Olson Development was founded in 1997 as an outgrowth of R.D. Olson Construction, which successfully operated for 20 years prior. R.D. Olson develops, repositions, and expands income properties around the U.S., specializing in hospitality properties with additional experience in residential and commercial/retail. Recent successful hotel projects include:

- *Marriott Residence Inn, Oceanside*: Four-story, 85,000-square-foot, 125-room extended stay hotel.
- *Marriott Residence Inn, Burbank*: Four-story, 123,000-square-foot, U-shaped, 166-room extended-stay hotel with the stylized look and feel of a Hollywood boutique hotel.
- *Marriott Residence Inn at John Wayne Airport, Orange County*: Eight-story, 174-room extended-stay hotel consisting of one and two bedroom suites, each with a fully-equipped kitchen.
- *Marriott Renaissance Clubsport, Aliso Viejo*: Six-story, 70,000-square-foot, 174-room hotel featuring a world-class health club using Marriott's new "urban country club" concept. 184,000-square-foot complex is the first full service hotel in Aliso Viejo.
- *Staybridge Suites, Anaheim Resort Zone*: Seven-story, 115,000-square-foot, 143-room extended-stay hotel consisting of studio, one- and two-bedroom suites, each with a fully equipped kitchen.

In addition to hotel projects, R.D. Olson's portfolio includes student housing, medical office, Class A office, and multifamily housing. R.D. Olson's pipeline projects that are currently in development include two Marriott Courtyard hotels in Oceanside and Maui and three Marriott Residence Inn hotels in Pasadena, San Juan Capistrano, and Santa Barbara. Based on R.D. Olson's proven track record of past and current projects, it is clear that R.D. Olson is a preferred

developer for Marriott International. It will be important to continue to seek assurance from Marriott International that the Corp Yard is a preferred location for the two proposed flags for the Courtyard and Residence Inn.

### **ENVIRONMENTAL REVIEW**

The Assistant City Manager/Director of Development Services has reviewed the proposed approval of the ENA for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review of the proposed ENA is required.

### **DECISION MAKER CONFLICT**

Staff has reviewed the property holdings of the CVRC Directors and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action.

### **ATTACHMENTS**

1. Developer SOQ
2. ENA
3. Exhibit Map of Corp Yard and UC-15 Subdistrict / E Street TOD study area

**PREPARED BY:** Jeff Steichen, Associate Planner/Project Manager

CVRC RESOLUTION NO. 2011-\_\_\_\_\_

RESOLUTION OF THE CHULA VISTA REDEVELOPMENT CORPORATION RECOMMENDING CITY COUNCIL APPROVAL OF AN EXCLUSIVE NEGOTIATING AGREEMENT WITH R.D. OLSON DEVELOPMENT FOR 5.98 ACRES OF CITY-OWNED PROPERTY LOCATED AT THE NORTHWEST CORNER OF F STREET AND WOODLAWN AVENUE (707 F STREET), CHULA VISTA, CALIFORNIA

WHEREAS, it is the role and responsibility of the Chula Vista Redevelopment Corporation ("CVRC") and the Redevelopment Agency of the City of Chula Vista ("Agency") to promote economic vitality, create market confidence, encourage environmental health and remediation, create public benefits and amenities, and facilitate the development, reconstruction, and rehabilitation of residential, commercial, industrial, and retail uses in the City of Chula Vista; and

WHEREAS, the Urban Core Specific Plan ("UCSP") adopted by the City of Chula Vista ("City") in 2007 envisioned revitalization of western Chula Vista and renewed private investment in the City's Urban Core through public and private redevelopment activities that promote economic development of the City; and

WHEREAS, the 2009-2010 Urban Land Institute Technical Assistance Panel ("ULI TAP") study for implementation of the E Street Transit-Oriented Development ("E Street TOD") program in the UC-15 Subdistrict ("Subdistrict") of the UCSP presented a series of key policy, real estate, infrastructure, and financial-related recommendations for the redevelopment activities; and

WHEREAS, the UCSP and ULI TAP study envision a mix of residential, commercial, and hospitality uses in the Subdistrict; and

WHEREAS, R.D. Olson Development ("Developer") is interested in developing a hotel development project within the Subdistrict on City-owned property located on the northwest corner of F Street and Woodlawn Avenue in the City of Chula Vista, California ("Property") and is interested in purchasing said Property from the City; and

WHEREAS, that certain real Property (APN 567-031-27) consists of a single City-owned parcel that previously served as the City's corporation yard and encompasses approximately 260,489 square feet, or 5.98 acres, of territory located at the northwest corner of F Street and Woodlawn Avenue; and

WHEREAS, the development of the aforementioned property as proposed will be a benefit to the City of Chula Vista because, but not limited to, of its ability to generate revenues for the City, create additional employment opportunities for its citizens, during the development of the property and subsequent hotel related activities, and serve to revitalize the surrounding community.

WHEREAS, an Exclusive Negotiating Agreement ("ENA") is an important tool to establish a legal and contractual framework for negotiations on a purchase and sale agreement, and any related development agreements, and to provide a defined timeline for completion of predevelopment activities with a developer on a potential project on City-owned land; and

WHEREAS, CVRC support staff has determined that Developer is qualified to design and develop a high quality project at the proposed development site that is consistent with the goals of the City's General Plan and Urban Core Specific Plan; and

WHEREAS, the CVRC is authorized under Chapter 2.55.060 of the Chula Vista Municipal Code ("CVMC") to approve and make recommendations to the City and Agency on ENAs within redevelopment project areas; and

WHEREAS, it is in the interest of the City of Chula Vista a for the City to execute and enter into an ENA with the Developer for the proposed development site based on the Developer's qualifications; and

WHEREAS, in accordance with Government Code Section 54221(b), the subject Property continues to be necessary for the City's use to implement the City's General Plan, Urban Core Specific Plan, and E Street TOD program for purposes of economic development and to promote "appropriate planning and development near transit stations" and "to encourage the clustering of housing and commercial development around such stations," consistent with the Legislature's reaffirmation of the importance of such transit-oriented development as declared in Government Code Section 54220(c); and

WHEREAS, approval of the ENA is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(3) of the State CEQA Guidelines.

NOW THEREFORE BE IT RESOLVED that the Chula Vista Redevelopment Corporation does hereby make recommendation to the City Council of the City of Chula Vista for the approval of the Exclusive Negotiating Agreement with R.D. Olson Development for City-owned property located on the northwest corner of F Street and Woodlawn Avenue (707 F Street) in the City of Chula Vista, California.

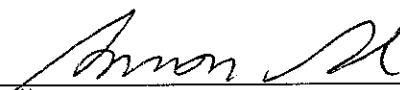
Presented by:

Approved as to form by

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Gary Halbert, AICP, PE  
Chief Executive Officer

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Glen Googins  
General Counsel





*Real Estate Services  
Development*

April 4, 2011

**VIA EMAIL**

City of Chula Vista  
Attn: Eric Crockett, Assistant Director, Redevelopment & Housing  
276 Fourth Avenue  
Chula Vista, CA 91910

**Re: Chula Vista Hotel Development Proposal – 707 F Street**

Dear Eric:

R.D. Olson Development ("RDOD") presents this letter of intent to purchase and develop within the City of Chula Vista ("City") two hotels on land currently owned by the City. The project would be located on approximately 5.98 acres of land on the northeast corner of Interstate 5 and F Street with an address of 707 F Street ("Subject Site"). RDOD is requesting an Exclusive Negotiation Agreement to commence due diligence and negotiate a Disposition and Development Agreement with the City for the Subject Site.

**Why RD Olson Development?**

- 13 years of hotel development experience and over 30 years of construction experience;
- Relationships with the strongest hotel brands in the world;
- Relationships with the debt and equity partners required to execute developments of this scale;
- One of the most highly regarded regional hotel developers in California;
- Capabilities to execute hotel projects and obtain financing in this difficult economy:
  - Secured financing and commenced construction in November 2010 on the 140-room Oceanside Marriott Courtyard, expected to open in November 2011;
  - Secured financing and commenced construction in February 2011 on the 130-room San Juan Capistrano Marriott Residence Inn, expected to open in early 2012;
  - In final loan negotiations for the development of a 138-room Marriott Courtyard in Kahului, Maui anticipated to commence in May 2011;
  - RDOD and its associated companies have a net worth in excess of \$25,000,000. Financial statements can be provided upon request.

The sections below summarize the responsibilities of both RDOD and the City in addition to the benefits to the Chula Vista community that such a project will provide.

**Commitment of RD Olson Development**

Develop two high quality, branded, select service hotels, a Marriott Courtyard, or equivalent product, of approximately 140 rooms and a Marriott Residence Inn, or equivalent product, of approximately 130 rooms ("Project") to serve local businesses and leisure travelers. In general, the amenities provided to the guests will include:

- Food service for guests;
- Onsite convenience market;
- Fitness center;
- Meeting space;
- Multi-station business center with printers;
- Patio area; and,
- Outdoor swimming pool and spa.

**Requested Commitment of the City of Chula Vista**

The City shall provide:

- An Exclusive Negotiation Agreement;
- A Disposition and Development Agreement;
- Title to the Subject Site clear of any encumbrances or liens; and,
- Planning approval to build the Project.

**Benefits to the City of Chula Vista**

The addition of the Project to the market will:

- Bring two high quality, branded, select service hotels to the City to accommodate corporate and leisure travelers;
- Provide meeting facilities for nearby businesses;
- Generate work for local trades, suppliers, and consultants during the development process;
- Create over 60 permanent jobs in the local labor market ranging from housekeeping and maintenance positions to front desk, managerial, food service, and sales positions earning between \$30,000 to \$120,000 per year;
- Generate unencumbered annual transient occupancy tax (TOT) for the City in excess of nearly \$1,000,000 in addition to other taxable business activities;
- Bring approximately 100,000 visitors annually to the Chula Vista community who will spend 122% of their daily lodging expenditures on meals, retail, attractions, transportation, and groceries amounting to an additional \$12,000,000 in annual revenue to local businesses (data supported by study performed by PKF Consulting).

We look forward to your response to this proposal and hope to work together to create a product that will benefit the Chula Vista community.

Sincerely,

RD OLSON DEVELOPMENT



for

Robert D. Olson, President

**R.D. OLSON (OWNER/DEVELOPER) SUMMARY**

R.D. Olson Development (RDOD) was formed in 1998 to develop hotels for its own portfolio. RDOD is owned and operated by Robert D. Olson. RDOD began by building two hotels totaling 407 rooms in the Disneyland Anaheim Resort that were later sold to Intercontinental Hotels. In addition to founding and owning 100 percent of RDOD, Mr. Olson founded R.D. Olson Construction (RDOC), which is ranked in the top 50 as a General Contractor in size by volume by California Construction Magazine in California.

RDOC has a solid track record building and retrofitting prominent hotels throughout the West and additionally has an excellent and extensive working relationship with Marriott International. RDOC began this relationship by renovating Marriott branded hotels in 1989 with the Marriott in Palm Desert, CA.

**Hotels developed by R.D. Olson Development include:**

Marriott Renaissance ClubSport	Aliso Viejo, CA (2008)
Timber Cove Inn	Sonoma County, CA (2008)
Marriott Residence Inn	Burbank, CA (2007)
Marriott Residence Inn	Oceanside, CA (2007)
Marriott Residence Inn	Irvine, CA (2001)
IHG Staybridge Suites	Anaheim, CA (2001)
IHG Holiday Inn	Anaheim, CA (2001)

**RDOD Projects currently under development:**

Marriott Courtyard ( <b>under construction</b> )	Oceanside, CA
Marriott Residence Inn ( <b>under construction</b> )	San Juan Capistrano, CA
Marriott Courtyard (in planning)	Kahului, Maui, HI
Marriott Residence Inn (in planning)	Pasadena, CA
Marriott Residence Inn (in planning)	Goleta, CA

**Hotels constructed by R.D. Olson Construction include:**

Hilton Homewood Suites	Oxnard, CA (2010)
Marriott Residence Inn	Long Beach, CA (2009)
Avia Hotel	Long Beach, CA (2009)
Marriott Renaissance ClubSport	Aliso Viejo, CA (2008)
Hotel Palomar	Westwood, CA (2008)
Marriott Residence Inn	Burbank, CA (2007)
Marriott Residence Inn	Oceanside, CA (2007)
Hyatt Regency Century Plaza	Century City, CA (2007)
Hilton Garden Inn	Oxnard, CA (2005)
Marriott Courtyard	Lake Forest, CA (2004)
Marriott Hotel	Woodland Hills, CA (2004)
Marriott Residence Inn	Irvine, CA (2001)
IHG Staybridge Suites	Anaheim, CA (2001)
IHG Holiday Inn	Anaheim, CA (2001)

## **R.D. OLSON** DEVELOPMENT

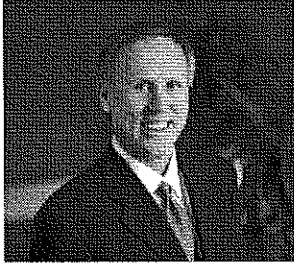
RDOC has built numerous other branded hotels throughout California (in addition to numerous smaller, boutique or unbranded hotels), including those branded by:

- Marriott
- Hyatt
- Hilton
- Starwood/W
- Sheraton
- Kimpton
- InterContinental
- Fairmont

In addition to new construction, RDOC has performed renovations of nearly all major brands.

Please refer to [www.rdodevelopment.com](http://www.rdodevelopment.com) for R.D. Olson Development details and current projects under construction, also visit [www.rdolson.com](http://www.rdolson.com) for R.D. Olson Construction details, current projects under construction, and its track record.

RDOD built the Residence Inn in Irvine, Oceanside and Burbank while providing asset management in an ownership capacity through disposition. The Residence Inn Irvine hotel is the Revenue per Available Room (RevPar) leader in the entire Irvine Airport hotel market. The hotel was one of the top four performers in the Residence Inn chain in 2004 and 2010, receiving the Platinum Hotel of the Year Award by Marriott International. In 2009, Marriott presented RDOD with its Design and Construction Excellence award identifying the Burbank project as the top Residence Inn to open in the previous 18 months.

**R.D. OLSON DEVELOPMENT MANAGEMENT TEAM***Robert D. Olson, President*

Robert Olson, founder of one of the country's leading hotel builders, R.D. Olson Construction, has been active in all phases of construction and development for almost three decades. He has played an instrumental part in a wide variety of projects across the U.S. including hotels, country clubs, retail, multi family, mid-rise office, and recreational facilities. Mr. Olson founded R.D. Olson Development in 1998 after spending nearly 20 years at the helm of R.D. Olson Construction. The time was right to detach the development services from the construction company, and R.D. Olson

Development was formed. Olson's experience as a builder inspired efforts to improve the development process by refining market analysis and adding increased efficiency in combination with improved quality.

The company was founded on the simple principles of providing what the marketplace demands, maintaining clear focus on the end user, and delivering creative solutions and profitable developments/ventures. Real estate markets may change, but the way we do business remains the same.

As a corporate executive who thoroughly enjoys the challenging demands and close working relationships that today's development business demands, Mr. Olson continues to play a role in every major R.D. Olson project. He works closely with his design and development teams in some of the company's most prestigious projects providing valuable input for marketing, investment analyses, debt and equity structure, planning and entitlements, budgeting, constructability and end-user requirements.

Mr. Olson received his MBA from the University of Southern California (USC). Mr. Olson was the recipient of the Orange County Business Journal's 2007 "Excellence in Entrepreneurship" Award, the Construction Financial Management Association's 1994 "Construction Executive of the Year", and Ernst & Young's 1989 "Entrepreneur of the Year". He has been a featured industry speaker at a number of industry conferences including UCLA's Hotel Investment Conference, Beverly Hills; the New York Hotel/Motel show at the Javits Center in New York City; and the Lodging Conference in Scottsdale, Arizona. Mr. Olson is an active member of the Young Presidents' Organization (YPO) having held the California Coast Chairman position in 2001 and 2002; additionally he served on the Board of Directors and Executive Committee of the Orange County Chapter of the American Red Cross.

*Anthony Wrzosek, Vice President of Planning and Development*

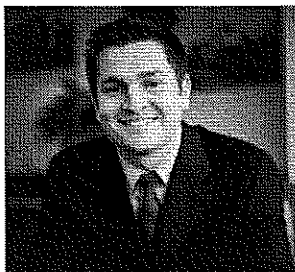


Anthony Wrzosek serves as vice president of planning and development for R.D. Olson Development, drawing on his 23 years of experience in the planning, architecture and construction industries. Wrzosek's responsibilities include overall management, due diligence, concept and design development, governmental entitlements and agency approvals, building technology, and development cost control.

Prior to joining R.D. Olson Development, Wrzosek provided operations and project management for prominent firms in the greater Chicago, San Francisco Bay, and Los Angeles metropolitan areas. He has managed a number of significant hospitality and multifamily projects including a 157-acre exclusive resort in Napa Valley, CA, a 41-story luxury apartment building in Chicago, IL, and a 329,000-square-foot hotel and training center in Oak Brook, IL.

Mr. Wrzosek is a licensed architect. He earned his Master of Architecture degree and Bachelor of Science degree from University of Illinois at Urbana-Champaign, and also attended the prestigious Ecole d'Architecture de Paris.

*Blake Evans, Director of Finance*



Blake Evans serves as director of finance for R.D. Olson Development, providing services including financial modeling and underwriting, market feasibility study, due diligence analysis, arranging for debt and equity funding, government agency liaison, and consultant coordination. Evans has seven years of experience in the finance industry, primarily focused on real estate.

Before joining R.D. Olson Development, Evans served nearly three years as a senior financial analyst in the asset management division of SunCal Companies, a large master planned developer on the west coast. He was responsible for providing the executive management team with cash flow management analysis, project debt and equity underwriting, quarterly project status reports, and project portfolio underwriting for over 20 master planned communities in various stages from acquisition to disposition.

A graduate of the University of Southern California's Marshall School of Business in 2003, Evans obtained a dual major in corporate finance and real estate finance. He also recently obtained the Certificate in Hotel Real Estate Investments and Asset Management from Cornell University's School of Hotel Administration.

*Robert A. Olson, General Counsel*

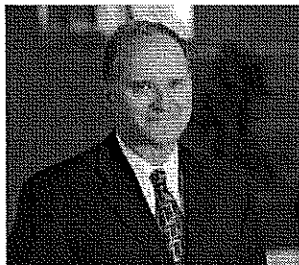


Robert A. Olson is a second-generation Olson and serves as general counsel for R.D. Olson Development, providing legal advice on acquisitions and development, performing due diligence on potential projects and negotiating agreements for the company. Robert A. has four years experience in real estate transactional law and has previously worked for R.D. Olson Construction on numerous projects.

Prior to joining R.D. Olson Development, Robert A. was an associate in the real estate transactions department at the Los Angeles office of Sidley Austin LLP, a large international law firm. He performed title review, drafted agreements for lenders and borrowers in many different types of transactions and also worked closely with lender clients on loan modifications and extensions.

Robert A. graduated from the University of California at Berkeley in 2002 with degrees in Political Science, Mass Communications and Business Administration and earned his law degree from the University of Southern California Gould School of Law in 2007. He was admitted to the California Bar in 2007 and is a member of the California Bar Association and the American Bar Association.

*Dave Smilgys, Vice President of Construction and Development*



Dave Smilgys serves as vice president of construction and development for R.D. Olson Development. In this position, Smilgys oversees day-to-day management of construction projects, approvals, building technology, and construction cost control for the firm. Smilgys brings more than 20 years of experience in the planning, architecture and construction industries.

Prior to joining R.D. Olson Development, Smilgys provided operations and project management expertise for Clark Construction and the Disneyland Resort. He has managed the construction of several significant entertainment and sports facilities including the 10,260-seat USC Galen Center in Los Angeles, CA, a 15,000-seat Savemart Center for Fresno State University in Fresno, CA, and the construction of Disney's California Adventure Paradise Pier in Anaheim, CA.

Smilgys earned his Master of Business Administration degree from the University of Phoenix and a Bachelor of Architecture degree from Ball State University. He is also a licensed architect.



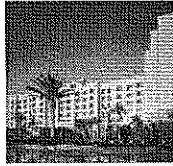
*Erika Urbani, Chief Financial Officer*

Erika Urbani oversees all aspects of R.D. Olson Development's finances including accounting and reporting, budgeting, risk management, and information systems management. Urbani also is a pertinent member of the company's strategic business planning team. She promotes best practices to enhance the company's effectiveness and profitability.

In 1991, after years of employment with the Corporate Finance Group at Chase Manhattan Bank in Buenos Aires, Argentina, Urbani moved to the United States and landed a position in R.D. Olson Construction's marketing department. Two years later, Urbani's aptitude for working with numbers redirected her positioning with the company and she moved into the accounting department where she also became involved with R. D. Olson Development's finances. In 1997, she was promoted to controller – a position she held until she was named Chief Financial Officer in 2006.

Urbani attended California State University, Fullerton and received her Bachelor of Arts degree in accounting. She also earned designations as a Certified Construction Industry Financial Professional and Certified Managerial Accountant. These academic achievements were in addition to her Bachelor of Science degree in computer science she received from the University of Belgrano, Argentina in 1991. She is a member of the National Executive Committee of the Construction Financial Management Association and was the 2006-2007 president of its Orange County chapter. She also conducts CCIFP overview seminars on accounting and financial management for candidates interested in sitting for the exam.

**R.D. OLSON DEVELOPMENT PROJECTS**

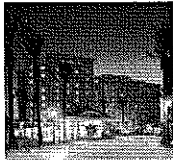


**Staybridge Suites by IHG, Anaheim Resort Zone**

Description: Seven-story, extended stay hotel including two-story great room, exercise and laundry facilities, meeting room, library, and business center.

Size: 143 rooms; 115,000 square feet

Location: Anaheim, California



**Holiday Inn by IHG, Anaheim Resort Zone**

Description: Nine-story, full service hotel including three meeting rooms, exercise and game facilities in an assembled hotel complex.

Size: 264 rooms; 135,000 square feet

Location: Anaheim, California



**Residence Inn by Marriott, John Wayne Airport (Orange County)**

Description: Eight-story, extended stay hotel includes meeting rooms, a fitness center, swimming pool, and sport court.

Size: 174 rooms; 142,000 square feet

Location: Irvine, California

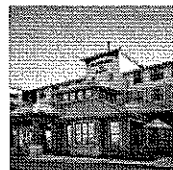


**Residence Inn by Marriott, Burbank**

Description: Four-story extended stay hotel includes meeting rooms, swimming pool, spa, and exercise room.

Size: 166 rooms; 123,000 square feet

Location: Burbank, California

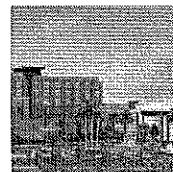


**Residence Inn by Marriott, Oceanside**

Description: Four-story extended stay hotel includes meeting rooms, swimming pool, exercise room, and sport court.

Size: 125 rooms; 85,000 square feet

Location: Oceanside, California



**Renaissance ClubSport, Aliso Viejo**

Description: Six-story, full service hotel with luxury health club integrated as one operating unit.

Size: 174 rooms; 118,000 square feet (hotel) + 66,000 square feet (club) = total project size of 184,000 square feet

Location: Aliso Viejo, California



**Courtyard by Marriott, Oceanside (under construction)**

Description: Four-story select service, business hotel includes 2,000 square feet of meeting space, swimming pool, exercise room, and bistro.

Size: 140 rooms; 82,000 square feet

Location: Oceanside, California



## DEVELOPER CONTACT LIST

Robert D. Olson  
President  
[bob.olson@rdodevelopment.com](mailto:bob.olson@rdodevelopment.com)  
949-271-1101

Anthony Wrzosek  
Vice President, Planning and Development  
[anthony.wrzosek@rdodevelopment.com](mailto:anthony.wrzosek@rdodevelopment.com)  
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Robert A. Olson  
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949-271-1106

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949-271-1119

Dave Smilgys  
Vice President, Development and Construction  
[dave.smilgys@rdodevelopment.com](mailto:dave.smilgys@rdodevelopment.com)  
949-271-1111

**FINANCIAL REFERENCES**

**Bank of America**

Allen Staff  
Senior Vice President  
(949) 260-5728

Dean Parsons  
Senior Vice President  
(949) 794-7133

**PNC Bank**

Paul Jamiolkowski  
Senior Vice President  
(412) 768-3928

**Compass Bank**

Kent Gorman  
Senior Vice President  
(205) 297-3328

**Wells Fargo**

Michael Ladkani  
Relationship Manager  
(949) 756-7756

**PUBLIC ENTITY REFERENCES**

**City of Oceanside**

Jane McVey  
Economic Development Director  
(760) 435-3355

**City of San Juan Capistrano**

Steven Apple  
Deputy City Manager  
(949) 493-1171

**City of Burbank**

Sue Georgino  
Fmr. Community Development Director  
(818) 238-5178

Greg Herrmann  
Community Development Director  
(818) 238-5176

**CONCEPTUAL PROJECT INFORMATION**

**Courtyard by Marriott**

- 140 Rooms
- 4-story, wood frame
- Footprint: 22,000
- Building Square Footage: 83,000
- Building Type: V-A
- Amenities:
  - Bistro to serve food and beverages to guests;
  - Bar and lounge area;
  - Business center;
  - Over 1,000 square feet of meeting space;
  - Board room;
  - Outdoor patio area with pool and spa;
  - Fitness center;
  - Onsite convenience market; and,
  - Guest laundry area.

**Residence Inn by Marriott**

- 130 Rooms
- 4-story, wood frame
- Footprint: 25,000
- Building Square Footage: 86,000
- Building Type: V-A
- Amenities:
  - Complimentary breakfast and light afternoon meal;
  - Business center;
  - Over 1,000 square feet of meeting space,
  - Board room;
  - Outdoor patio area with barbeque, pool, and spa;
  - Outdoor sports court;
  - Fitness center;
  - Onsite convenience market;
  - Guest laundry area;
  - All-suite guestrooms with full kitchen.

**Total Site**

- Acreage: 5.98 (260,489 square feet)
- FAR: 0.65
- Lot Coverage: 18.0%



### Disclosure Statement\*\*\*

Pursuant to City Council Policy 101-01, prior to any action on a matter that requires discretionary action by the City Council, Planning Commission or other official legislative body of the City, a statement of disclosure of certain ownerships, financial interests, payments, and campaign contributions must be filed. The following information must be disclosed:

1. List the names of all persons having a financial interest in the project that is the subject of the application, project or contract (e.g., owner, applicant, contractor, subcontractor, material supplier).  
Olson Real Estate Group Inc. dba RD Olson Development
2. If any person\* identified in section 1. above is a corporation or partnership, list the names of all individuals with an investment of \$2000 or more in the business (corporation/partnership) entity.  
Robert D. Olson, President, RD Olson Development
3. If any person\* identified in section 1. above is a non-profit organization or trust, list the names of any person who is the director of the non-profit organization or the names of the trustee, beneficiary and trustor of the trust.  
N/A
4. Please identify every person, including any agents, employees, consultants, or independent contractors, whom you have authorized to represent you before the City in this matter.  
Anthony Wrzosek, Vice President of Planning and Development  
Blake Evans, Director of Finance  
Robert A. Olson, General Counsel  
David Smilgys, Vice President of Development and Construction



### Disclosure Statement\*\*\*

#### Disclosure Statement –Page 2

5. Has any person\* identified in 1., 2., 3., or 4., above, or otherwise associated with this contract, project or application, had any financial dealings with an official\*\* of the City of Chula Vista as it relates to this contract, project or application within the past 12 months? Yes \_\_\_\_\_ No x

_____	_____
_____	_____
_____	_____

If Yes, briefly describe the nature of the financial interest the official\*\* may have in this contract.

\_\_\_\_\_

\_\_\_\_\_

6. Has any person\* anyone identified in 1., 2., 3., or 4., above, or otherwise associated with this contract, project or application, made a campaign contribution of more than \$250 within the past twelve (12) months to a current member of the Chula Vista City Council? No x Yes \_\_\_\_\_ If yes, which Council member?

\_\_\_\_\_

7. Has any person\* identified in 1., 2., 3., or 4., above, or otherwise associated with this contract, project or application, provided more than \$420 (or an item of equivalent value) to an official\*\* of the City of Chula Vista in the past twelve (12) months? (This includes any payment that confers a personal benefit on the recipient, a rebate or discount in the price of anything of value, money to retire a legal debt, gift, loan, etc.) Yes \_\_\_\_\_ No x

If Yes, which official\*\* and what was the nature of item provided?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Has any person\* identified in 1., 2., 3., or 4., above, or otherwise associated with this contract, project or application, been a source of income of \$500 or more to an official\*\* of the City of Chula Vista in the past twelve (12) months? Yes \_\_\_\_\_ No x





### Disclosure Statement\*\*\*

If Yes, identify the official\*\* and the nature of the income provided?

---

Date: 4/5/11

Signature of Contractor/Applicant

BLAKE EVANS FOR ROBERT D. OLSON, PRESIDENT  
Print or type name of Contractor/Applicant

- \* Person is defined as: any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, any other county, city, municipality, district, or other political subdivision, or any other group or combination acting as a unit.
- \*\* Official includes, but is not limited to: Mayor, Council member, Planning Commissioner, Member of a board, commission, or committee of the City, and City employees or staff members.
- \*\*\* This Disclosure Statement must be completed at the time the project application, or contract, is submitted to City staff for processing, and updated within one week prior to consideration by the legislative body.

Last Updated: September 8, 2009

## Attachment 2

### EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement ("Agreement"), dated as of this \_\_\_ day of \_\_\_, 2011 ("Effective Date"), is made by and between the CITY OF CHULA VISTA, a public body, corporate and politic ("City"), and R.D. OLSON DEVELOPMENT, a Limited Partners company ("Developer"), with reference to the following facts:

#### RECITALS

The comprehensive General Plan Update and Urban Core Specific Plan ("UCSP") adopted by the City in 2005 and 2007, respectively, envisioned revitalization of western Chula Vista and renewed private investment in the City's Urban Core through redevelopment activities that promote economic vibrancy, create market confidence, encourage environmental health and remediation, create public benefits and amenities, and facilitate the development, reconstruction, and rehabilitation of residential, commercial, industrial, and retail uses in the City.

To implement the General Plan and UCSP for the E Street Visitor Transit Focus Area, the City and Redevelopment Agency of the City of Chula Vista ("Agency") commissioned and completed the 2009-2010 Urban Land Institute Technical Assistance Panel ("ULI TAP") study for implementation of the E Street Transit-Oriented Development ("E Street TOD") program in the UC-15 Subdistrict of the UCSP, which presented a series of key policy, real estate, infrastructure, and financial-related recommendations for the redevelopment activities. The UCSP and ULI TAP study envision a mix of residential, commercial, and hospitality uses in the UC-15 Subdistrict.

The subject matter of this Agreement concerns that certain real property located within the UC-15 Subdistrict of the UCSP as depicted in Exhibit "A" attached hereto. The subject property consists of a single City-owned parcel that previously served as the City's corporation yard, and encompasses approximately 260,489 square feet, or 5.98 acres, of territory located on the northwest corner of F Street and Woodlawn Avenue in the City of Chula Vista, California (Assessor Parcel Number 567-031-2700) ("Property").

The Property, given its strategic gateway location from Interstate 5 into the City's downtown urban core and its adjacency to the E Street Trolley Station, is an integral cornerstone for implementation of the City's land use goals and policies for the E Street Visitor Transit Focus Area of the General Plan, and the City's development standards and design guidelines of the UC-15 Subdistrict of the UCSP.

Developer is proposing to develop one or more limited service hotel developments ("Project") on the Property in accordance with the City's development standards and design guidelines of the UC-15 Subdistrict of the UCSP and desires to negotiate a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property.

City has reviewed Developer's qualifications to develop the Property with the proposed Project and has determined that Developer possesses the experience, proven track record, and financial wherewithal to develop the Property.

Developer anticipates that, following execution of this Agreement and through the period of negotiation and preparation of a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, it will devote substantial time and effort in preparing plans, preparing pro forma financial analyses, contacting financial institutions, engaging appropriate consultants, and meeting with the City and various other necessary third parties in connection with the Project, and in negotiation and preparing a Purchase and Sale Agreement, and related development agreements, consistent with the basic terms and mutual understandings established in this Agreement.

City and Developer ("Parties") desire to enter into this Agreement in order to set forth the rights and duties of the Parties during the term of the Exclusive Negotiating Period.

NOW, THEREFORE, in consideration of the foregoing Recitals which the City find are true and correct and the obligations contained herein, the Parties mutually agree as follows:

1. GOOD FAITH NEGOTIATIONS

A. City and Developer agree to negotiate in good faith pursuant to the terms of this Agreement, a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, to be entered into between the City and Developer concerning the disposition and development of the Property by Developer. During the negotiation period and pursuant to Section 2 below, City agrees not to solicit a proposal for or negotiate with any other person or entity regarding development of the Property without the consent of Developer. Nothing in this Agreement shall be deemed a covenant, promise or commitment by the City, or any agency of the City, with respect to the acquisition or divestment whether by sale, leasehold or any other instrument of property or the approval of the development project. City's acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any actions required of it.

B. Notwithstanding the foregoing, Developer acknowledges that City may receive from time to time, unsolicited alternative proposals for the development of the Property. City shall notify Developer within five days after receiving an unsolicited development proposal for all or any portion of the Property. City and Developer shall confer in good faith to assess the benefits of the unsolicited proposal. The City agrees, however, to not enter into any other Exclusive Negotiating Agreement, or enter into negotiation with any other persons or entities, with regard to the Property during the negotiation period, as described in Section 2 of this Agreement.

2. NEGOTIATION PERIOD

A. City and Developer agree to negotiate for an initial period of ninety (90) days which shall commence on the Effective Date unless earlier terminated in accordance with the provisions hereof ("Initial Negotiation Period").

B. If the City Manager of the City determines, at the end of the Initial Negotiation Period, that Developer has fulfilled all of its obligations as set forth in this Agreement herein, he or she, in his or her sole discretion and on behalf of the City, is authorized to extend, in writing, the term of this Agreement for up to an additional sixty (60) days ("Extended Negotiation Period"), provided that at the end of the Initial Negotiation Period, neither the City nor the Developer has exercised its right to terminate the Agreement, as provided herein, and the Developer is in full compliance with all terms and conditions hereof, the Developer concurs with such extension of the negotiation period, the Developer provides City with a draft Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, and the City Manager has determined that: (i) there is a reasonable likelihood that the City will agree to the terms and conditions for the development of the Project on the Property; and (ii) City staff will be able to recommend approval of a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, to the City prior to the expiration of the Extended Negotiation Period.

C. If, after expiration of the Initial Negotiation Period, or after the Extended Negotiation Period if this Agreement is extended, the Parties have not each approved and executed a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, then this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Property, and City shall be free to negotiate with any other persons or entities with regard to the Property.

### 3. OBLIGATIONS OF DEVELOPER

#### A. Schedule

City and Developer agree and acknowledge that all submittals required by this Agreement shall be submitted pursuant to the timeline attached here to as Exhibit "B." Exhibit "B" includes, but is not limited to, submittals of site plans and elevations, pro forma analyses, and evidence of project financing.

#### B. Site Plans and Elevations

During the Initial Negotiation Period, Developer shall prepare and submit a proposed site plan and elevation drawings or renderings for the Project, including any alternative site plans as appropriate. The site plans and elevations should consider factors including, but not limited to, the City's adopted land use plans and policies for the Property, adjacent land ownerships and property interests in the UC-15 Subdistrict, future grade separation of the Trolley line (above or below grade), parcel configurations, circulation and traffic patterns, environmental factors, plans for regional transportation facilities, the approved Bayfront Master Plan, and public input. The site plans shall identify the proposed Floor Area Ratio ("FAR") distributions, phasing strategies, and pedestrian and vehicular circulation patterns on the Property and, where appropriate,

surrounding properties within the UC-15 Subdistrict. Developer shall also furnish such information to the City regarding the proposed Project as may be required by the City to perform secondary studies as required by the California Environmental Quality Act ("CEQA") and UCSP, inclusive of the final certified environmental impact report for the UCSP.

C. Market and Economic Analysis

During the Initial Negotiation Period, Developer shall submit pro forma financial feasibility analyses for the Project in sufficient detail for City staff to evaluate the economic feasibility of the Project. Separate construction and operating pro formas shall be submitted for the Project. Developer shall also submit a market analysis that provides sufficient justification that the proposed Project is viable on the Property.

D. Financing

Developer shall provide the City with supporting evidence of Developer's ability to secure financing for the acquisition and development of the Property.

E. Appraisal

City shall obtain the services of two independent third party appraisers to conduct independent appraisals of the Property ("Appraisals"), which shall serve as the basis for negotiations between City and Developer on the fair market value of the Property.

F. Public Input

As City deems reasonably necessary or appropriate, presentations may be requested by the City or staff at public forums to solicit input from citizens, businesses, stakeholders, and relevant interest groups.

G. Reports and Studies, including Ownership, Publication, Reproduction and Use thereof

If this Agreement is terminated for any reason, or if the Parties are unable to enter into a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials submitted by Developer to the City or staff in conjunction with this Agreement shall become the sole and exclusive property of the City, if the Developer is reimbursed for its actual costs paid to third parties in producing such materials and that no confidential or proprietary information of Developer (if identified as such when first provided to the City) shall become the property of City. City shall have unrestricted authority to use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement. Developer shall also make written or oral reports to the City on the Developer's progress toward meeting its obligations under this Agreement, as requested by the City or its staff, including all matters and all studies being prepared that are related to the development of the Project and other matters under negotiation, to

the extent that they do not include confidential matters. All fees and expenses for engineers, architects, financial consultants, legal, planning or other consultants engaged by Developer to perform Developer's obligations set forth in this Agreement shall be the sole responsibility of Developer, except as otherwise set forth herein.

#### H. Deposit

Within fourteen (14) days of the Effective Date, Developer shall deposit with City \$25,000 (Twenty-five Thousand Dollars) in immediately available funds ("ENA Deposit"). The ENA Deposit shall be used by City to prepare the two Appraisals and conduct project analysis for this Agreement including, but not limited to, payment for third party consultants and other reasonable costs incurred by the City in conducting such analysis, but specifically excluding costs incurred for City staff labor expenses. Upon written request of Developer, City shall provide Developer with regular accounting of funds expended. City shall request additional deposits of up to \$25,000 in the aggregate if the ENA Deposit is exhausted and City determines further analysis is required. City may cease negotiations and all activities of third party consultants until such time as ENA Deposit is replenished as reasonably requested by City. Any deposit balance remaining upon the termination of the Agreement, including any interest earned on said deposit, shall be returned to Developer or shall be applied to any deposit required by a subsequent a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property.

#### 4. CITY OBLIGATIONS AND DUE DILIGENCE

A. During the Initial Negotiation Period, City shall conduct a due diligence investigation of the Developer's ability to own and/or operate the Project in a responsible manner. If the City Manager determines in his or her reasonable discretion that Developer does not have the ability to successfully own and/or operate the Project in a responsible manner, the City Manager may terminate this Agreement by delivering written notice thereof to Developer. City's due diligence efforts may include, without limitation, the following:

1. Assessment of the proposed financing and the capacity of Developer to qualify for financing for the Project. At the written request of the City, Developer also agrees as a continuing obligation to provide to the City all documentation reasonably related for the City to assess the proposed financing and the capacity of Developer to qualify for financing for the Project; and

2. Assessment of the capacity of Developer and its principal staff to effectively own and/or manage the Project, including the ability to carry out any ongoing management oversight responsibilities. At the written request of the City, Developer also agrees as a continuing obligation to provide to the City all documentation reasonably related for the City to assess the capacity of Developer and its principal staff to effectively own and/or manage the Project, including the ability to carry out any ongoing management oversight responsibilities.

B. City agrees to cooperate with Developer in providing equity partner(s) and/or lender(s) of Developer with appropriate and necessary information for the Developer to fulfill its obligations hereunder, which information is not otherwise privileged.

C. City shall also cooperate with Developer's professional consultants and associates in providing them with any information and assistance, so far as such information is not otherwise privileged, reasonably within the capacity, possession or control of the City in connection with the preparation of the Developer's submissions to the City.

## 5. PURCHASE AND SALE AGREEMENT

The Parties hereby acknowledge and agree that, during the Initial Negotiation Period and, if applicable, the Extended Negotiation Period, the Parties shall use their respective good faith efforts to negotiate and enter into a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, which shall include, but not be limited to, the following: (i) the design of the Project by the Developer, which design and any required permits shall be subject to the approval by the City; (ii) the construction of the Project by the Developer in accordance with final plans and specifications to be provided by the Developer and approved by the City, pursuant to a detailed schedule of performance by the Developer; (iii) the operation and management of the Project by the Developer in a good and professional manner and subject to the covenants required by law; (iv) the maintenance of landscaping, buildings, and improvements in good condition and satisfactory state of repair so as to be attractive to the community; (v) the operation of the Project by the Developer in compliance with all equal opportunity standards established by federal, state and local law; (vi) the Project shall be of a quality consistent with plans and renderings provided by Developer and approved by the City; (viii) the terms and conditions upon which either party may terminate the Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, (e.g., the discovery of environmental issues/hazardous substances on the Property, unexpected development or construction costs).

## 6. ADDITIONAL TERMS AND OBLIGATIONS

### A. Real Estate Commissions

City shall not be liable for any real estate commission or brokerage fees which may arise herefrom. Developer agrees to indemnify and hold the City harmless from and defend City against claims for commissions or fees made by such party and against any damage or expense that the City may incur, including expenses for attorney's fees and court costs.

### B. Each Party to Bear its Own Cost

Each party shall bear its own costs incurred in connection with the negotiation of a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, and the implementation of this Agreement, except as otherwise expressly provided herein or expressly agreed in writing.

### C. Confidentiality

City and Developer recognize that disclosures made by Developer pursuant to this Agreement may contain sensitive information and that the disclosure of such information to third parties could impose commercially unreasonable and/or uncompetitive burdens on Developer and, may correspondingly, diminish the value or fiscal benefit that may accrue to the City upon the redevelopment of the Property by the Developer, if a future Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, is entered into by the Parties. Developer acknowledges and agrees that City is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by Developer to City with respect to the Property, the Project or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that Developer reasonably deems and identifies in writing as proprietary and confidential in nature, City agrees to exercise its best efforts to keep such information confidential. In addition, if City determines that it is required under applicable law to disclose any information identified by Developer as proprietary and confidential in nature, City shall notify Developer as least three business days before disclosure of such information which will provide Developer the opportunity to seek a protective order preventing such disclosure.

### D. Assignment

1. City would not have entered into this Agreement but for Developer's unique qualifications and experience. Therefore, Developer's rights and obligations under this Agreement may not be assigned without the prior written approval of City in its sole discretion. Notwithstanding the foregoing, Developer may assign this Agreement to a Developer Affiliate (as defined below) without the requirement of obtaining City's prior written approval (but nevertheless requiring at least ten (10) business days prior written notice). The term "Developer Affiliate" shall mean any entity which is controlled by Robert D. Olson or which has Robert D. Olson as a manager, managing member or general partner or an entity controlled by Robert D. Olson as a manager, managing member or general partner. Notwithstanding the foregoing, no assignment by Developer (whether to a Developer Affiliate or otherwise) shall release Developer from any of its obligations hereunder, and any assignment by Developer (even to a Developer Affiliate) shall require the full assumption by the assignee (on a joint and several basis) of all of Developer's obligations hereunder, and the assignment and assumption agreement must be delivered to City within ten (10) business days of such assignment.

2. Upon the assignment, sale or transfer, whether voluntary or involuntary, of more than fifty percent (50%) of the membership, ownership, management or control of the Developer (other than such changes occasioned by the death or incapacity of any individual) that has not been approved by the City, the City may terminate this Agreement, without liability, by sending written notice of termination to Developer.

### E. Nondiscrimination



Developer shall not discriminate against nor segregate any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, national origin or ancestry in undertaking its obligations under this Agreement.

## 7. RETENTION OF DISCRETION

A. By its execution of this Agreement, City is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by City or any department thereof including, but not limited to, the approval and execution of a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property; the proposal, amendment, or approval of any land use regulation governing the Property or any other such activity.

B. Developer understands and agrees that the City, in their respective legislative roles, reserve the right to exercise their discretion as to all matters which the City are by law entitled or required to exercise such discretion, including but not limited to, entitlements or permits for the development of the Property and adoption of any amendments to policy documents (including the General Plan, Urban Core Specific Plan, and Redevelopment Plans). In addition, Developer understands and agrees that the entitlements and any other documents shall be subject to and brought to the City, as appropriate, for consideration in accordance with applicable legal requirements, including laws related to notice, public hearings, due process, and the California Environmental Quality Act.

C. Developer acknowledges that any plans processed for the Property will be based upon the current General Plan and Zoning Code of the City, including the UCSP. Developer agrees and acknowledges that the processing, adoption and/or amendment of the General Plan or the UCSP by the City is not a consideration in its proceeding with this Agreement or the proposed development project and Developer may need to request amendments to the General Plan or UCSP. The General Plan and UCSP are legislative actions and this agreement does not limit or in any way interfere with the City Council's ability to exercise their discretionary authority as it relates to these or any other legislative actions. Developer acknowledges and agrees that the exercise of the City's legislative discretion, whether by the City Council's own actions or pursuant to or as a result of any litigation shall not form the basis of breach of this Agreement, express or implied, or any other claims against the City.

D. This Agreement does not constitute a disposition of property or exercise of control over property by City and does not require a public hearing. City execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any proposed a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, and all proceedings and decisions in connection therewith. The parties understand that City and Developer each have the complete and unfettered discretion to reject a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, without explanation or cause. The risk of loss of all processing, design and developmental costs incurred by the Developer prior to a Purchase and Sale Agreement, or other agreement for the disposition and development of the Property, approval shall be absorbed entirely by Developer, except as

otherwise provided herein. As to any matter which the City may be required to exercise its unfettered discretion in advancing the Project to completion, nothing herein shall obligate the City to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of City duties under this agreement.

#### 8. TERMINATION RIGHTS

Notwithstanding the Initial or Extended Negotiating Periods hereinabove set forth, either party may terminate this Agreement if the other party has materially defaulted in its obligations herein set forth, and the terminating party has provided defaulting party with written notification of such determination, and the defaulting party has refused to cure same. The written notification shall set forth the nature of the actions required to cure such default if curable. Defaulting party shall have 30 days from the date of the written notification to cure such default. If such default is not cured within the 30 days, the termination shall be deemed effective. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. Each party shall also have the right to terminate this Agreement in the event that City or Developer determines that: (a) the Project is infeasible or not in the public interest; or (b) the parties reach an impasse in their negotiation of the Purchase and Sale Agreement, or other agreement for disposition and development of the Property, which cannot be resolved after good faith efforts.

#### 9. GENERAL PROVISIONS

##### A. Addresses for Notice

Developer's Address for Notice:

R.D. Olson Development  
2955 Main Street, Third Floor  
Irvine, California 92614  
Attention: Robert D. Olson, President/CEO  
Telephone: (949) 474-2001  
Fax: (949) 474-1534

Agency's Address for Notice:

City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910  
Attention: Eric Crockett, Assistant Director, Redevelopment & Housing  
Telephone: (619) 476-5341  
Fax: (619) 476-5310

##### B. Authority

Each party represents that it has full right, power and authority to execute this Agreement and to perform its obligations hereunder, without the need for any further action under its

governing instruments, and the parties executing this Agreement on the behalf of such party are duly authorized agents with authority to do so.

C. Counterparts

This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each party has signed such a counterpart.

D. Entire Agreement

This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

E. Further Assurances

The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

F. No Third Party Beneficiaries

There are no other parties to this Agreement, express or implied, direct or indirect. City and Developer acknowledge that it is not their intent to create any third party beneficiaries to this Agreement.

G. Exclusive Remedies

1. In the event of default by either party to this Agreement, the Parties shall have the remedies of specific performance, mandamus, injunction and other equitable and legal remedies. Neither party shall have the remedy of monetary damages against the other; provided, however, that the award of costs of litigation and attorneys' fees shall not constitute damages based upon breach of this Agreement where such an award is limited to the reasonable costs of litigation incurred by the Parties.

2. Each party acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with debtor.

California Civil Code Section 1542 notwithstanding, it is the intention of the Parties to be bound by the limitation on damages and remedies set forth in this Section 7G, and the Parties hereby release any and all claims against each other for monetary damages or other legal or equitable relief related to any breach of this Agreement, whether or not any such released claims were known to either of the Parties as of the date of this Agreement. The Parties each waive the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions of similar effect with regard to the limitations on damages and remedies and waivers of any such damage and remedies contained in this Section 7G.

H. Indemnity

Developer shall indemnify, protect, defend and hold harmless City, its elected officials, employees and agents from and against any and all challenges to this Agreement, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from Developer's negligent acts, errors, or omissions with respect its obligations hereunder or the Property, excluding any such losses arising from the sole negligence or sole willful misconduct of City, its elected officials, employees, and agents. This indemnity obligation shall survive the termination of this Agreement.

I. Time is of the Essence

Time is of the essence for each of Developer's and City's obligations under this Agreement.

J. Headings

The captions and headings in this Agreement are for convenience only and shall not define or limit the provisions hereof.

[NEXT PAGE IS SIGNATURE PAGE]

**Signature Page**  
**To**  
**Exclusive Negotiating Agreement**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set forth above, thereby indicating the consent of their principals.

CITY OF CHULA VISTA

OLSON REAL ESTATE GROUP, INC.  
d/b/a R.D. OLSON DEVELOPMENT

By: \_\_\_\_\_  
Cheryl Cox  
Mayor

By: \_\_\_\_\_  
Robert D. Olson  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Glen Googins  
City Attorney

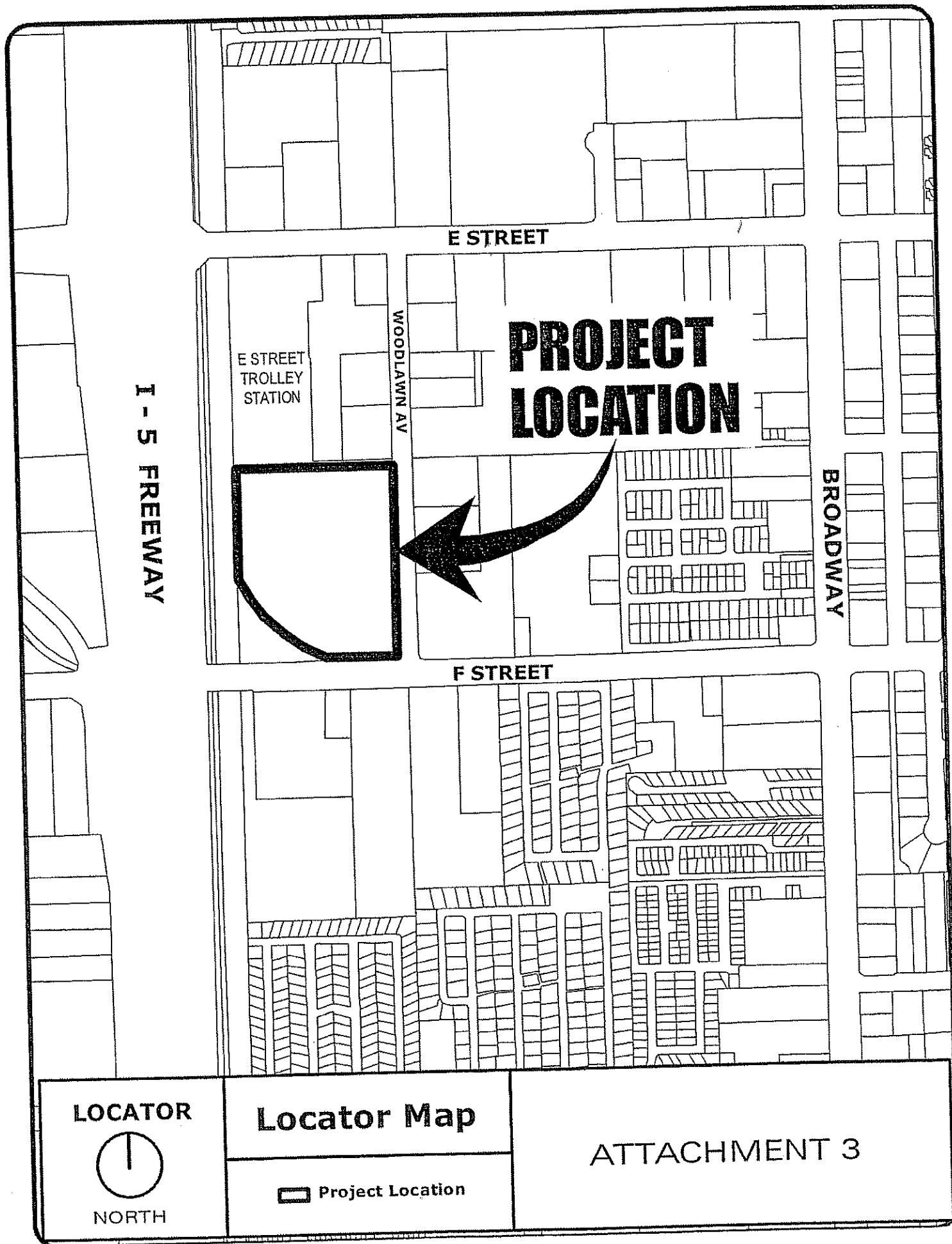
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Donna Norris  
City Clerk

**EXHIBIT "B"**  
**ENA SCHEDULE**

TIMEFRAME	MILESTONE	DESCRIPTION	RESPONSIBLE PARTY
Within 20 Days of ENA Execution	Appraisal	Initiate at least two Appraisals of the Property by independent third party appraisers.	City
	Site Plans and Elevations	Pre-application meeting with City staff and submittal of preliminary site plans and elevations based on UCSP development standards and design guidelines.	Developer
	Economic Analysis	Real estate market analysis of anticipation performance of the Project. Construction and operating pro forma feasibility analyses of the Project.	Developer
Within 60 Days of ENA Execution	Site Adequacy	Written determination of whether the subject Property is physically suitable for development, taking into account regulatory and environmental conditions that are deemed relevant by both Parties.	Developer
	Project Development Schedule	Projected timeline and schedule for pre-development activities and construction of the Project.	Developer
	Revised Site Plans and Elevations	Revised site plans and elevations based on City staff review and comments, and consistency with applicable General Plan and UCSP land use policies, development standards, and design guidelines.	Developer
	Revised Economic Analysis	Revised pro forma feasibility analyses based on revisions to the site plans and elevations.	Developer
	Draft Purchase & Sale and Development Agreements	Initial drafts of business deal points, Purchase & Sale Agreement, and related development agreement to begin negotiations.	City
Within 90 Days of ENA Execution	Final Site Plans and Elevations	Final site plans and elevations based on preliminary design review and City staff review and comments.	Developer
	Financing	Identification of lenders and supporting evidence of ability to obtain financing.	Developer
	City Council Presentation	Presentation of development program and proposed transactions and agreements to the City for review and consideration.	City/Developer



ATTACHMENT 3  
MAPS

